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July 10, 2003

Financial Crimes Enforcement Network  
Department of the Treasury  
P.O. Box 39  
Vienna, Virginia 22183

Re: Anti-Money Laundering Programs for Investment Advisers  
68 FR 23646 (May 5, 2003)

Dear Sir or Madam:

America's Community Bankers ("ACB")<sup>1</sup> is pleased to comment on the Financial Crimes Enforcement Network's ("FinCEN") proposed rule implementing section 352 of Title III of the USA PATRIOT Act of 2001 ("Patriot Act").<sup>2</sup> The proposal would require certain investment advisers to establish an anti-money laundering program that 1) is reasonably designed to prevent the firm from being used to launder money or finance terrorism; 2) tests for compliance; 3) designates an anti-money laundering officer or committee; and 4) provides for ongoing employee training.

Investment advisers are not included in the Bank Secrecy Act's (the "Act" or the "BSA") statutory definition of "financial institution" and therefore have not been subject to the Act's anti-money laundering requirements. Nevertheless, FinCEN has discretion to regulate entities that are "similar to, related to, or a substitute [for]" any of the businesses enumerated in the BSA and is proposing to exercise its authority to define investment advisers as a financial institution for anti-money laundering program purposes.<sup>3</sup>

### **ACB Position**

ACB supports the fight against terrorist financing and other financial crimes, and we recognize the important role community banks play in this effort. Moreover, we believe that investment advisers have an important role to play in maintaining the integrity of the

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<sup>1</sup> America's Community Bankers represents the nation's community banks. ACB members, whose aggregate assets total more than \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

<sup>2</sup> 68 Fed. Reg. 23646.

<sup>3</sup> Bank Secrecy Act, 31 U.S.C. 5312(a)(2)(Y).

U.S. financial system by preventing their services from being used to facilitate money laundering and terrorist activities. We also believe that all entities subject to anti-money laundering regulations should be subject to the same degree of regulatory scrutiny and support the delegation of FinCEN's examination authority to the Securities and Exchange Commission ("SEC").

ACB continues to be concerned about the cumulative cost that Patriot Act regulations place on community banks. The proposed rule would layer additional BSA requirements on savings associations and savings banks that offer fiduciary products and services, including trust and security products.

Unlike banks, savings associations and savings banks are not exempt from the Investment Adviser's Act of 1940<sup>4</sup> and therefore would be subject to duplicative regulation if the proposed rule is adopted. Such an unnecessary burden on savings associations and savings banks does not represent a prudent allocation of government resources. Implementing the rule as proposed would not improve money laundering detection by savings associations and savings banks. It would, however, consume funds that institutions would otherwise invest in their communities. We therefore strongly urge FinCEN to exclude savings associations and savings banks from any anti-money laundering requirements imposed on investment advisers.

### **Savings Associations and Savings Banks Should Be Exempted From the Rule's Scope**

The proposal would not apply to entities that are:

- Exempt from SEC registration under section 203(b)(3) of the Investment Advisers Act;
- Otherwise required to have an anti-money laundering program under the BSA; and are
- Examined by a federal functional regulator.

Section 202(a)(11) of the Investment Advisers Act specifically exempts banks and bank holding companies from the definition of an "investment adviser." Savings associations and savings banks do not enjoy this same exemption and must therefore register as an investment adviser with the SEC. Because the proposal relies on the terms and definitions contained in the Investment Advisers Act, savings associations and savings banks offering fiduciary services would be subject to BSA regulations pertaining to federally regulated savings associations and savings banks and to BSA regulations applicable to investment advisers.<sup>5</sup>

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<sup>4</sup> Investment Advisers Act of 1940 § 202(a)(11), 15 U.S.C. 80b-2(a)(11).

<sup>5</sup> H.R. 1375, the Financial Services Regulatory Relief Act of 2003 has been reported in the U.S. House of Representatives. The bill would grant parity to savings associations offering fiduciary services by amending the Investment Advisers Act of 1940 to exempt savings associations from the definition of "investment adviser."

Savings associations and savings banks already maintain comprehensive anti-money laundering programs, file Suspicious Activity Reports and Currency Transaction Reports, respond to information inquiries from federal law enforcement agencies regarding suspected money laundering or terrorism, comply or are preparing to comply with the Patriot Act's customer identification requirements, and are examined for compliance by either the Office of Thrift Supervision ("OTS") or the Federal Deposit Insurance Corporation ("FDIC"). Accordingly, we believe that it is unnecessary for savings associations and savings banks offering fiduciary services to be examined by the SEC. The OTS supports the amendment to the Investment Advisers Act and has developed a comprehensive examination regime for those savings associations engaged in fiduciary services.

FinCEN explicitly excluded banks from the proposed rule in order to avoid duplicative anti-money laundering regulation by the SEC and the federal banking agencies. While ACB supports FinCEN's efforts to minimize duplicative regulations, we believe that the proposed exception is too narrow. To avoid regulatory redundancy, we request that FinCEN clarify that savings associations and savings banks are exempt from any anti-money laundering requirements imposed on investment advisers.

### **Conclusion**

ACB stands ready to work with Treasury throughout the remainder of the Patriot Act rulemaking process to ensure that regulations are effective without being unduly burdensome. Thank you for the opportunity to comment on this important matter. Should you have any questions, please contact the undersigned at 202-857-3121 or via e-mail at [cbahin@acbankers.org](mailto:cbahin@acbankers.org), or Krista Shonk at 202-857-3187 or via e-mail at [kshonk@acbankers.org](mailto:kshonk@acbankers.org).

Sincerely,



Charlotte M. Bahin  
Senior Vice President  
Regulatory Affairs